Supreme Court, U.S.
FILED

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Docket No. _____

The Supreme Court of the United States

John Barth,
Petitioner and Plaintiff
v.
Town of Sanford, Maine and Inhabitants,
Daniel Casey, John Doe, Gene Carter, and David Cohen,
Respondents and Defendants

On Petition for Writ of Certiorari
to the United States Court of Appeals for the First Circuit

PETITION FOR WRIT OF CERTIORARI

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Questions Presented for Review

1. Is the amended complaint constitutionally adequate?
2. Is the 27 page double-spaced complaint so lengthy or verbose as to preclude process? Is length due to plaintiff fault, or to the complexity of offenses, evidence, and law?
3. Does dismissal of a complex complaint on basis of length, which plaintiffs could not further reduce, deny the due process of law mandated by Amendments V and XIV of the U.S. Constitution in the taking of property by a state entity?
4. Does dismissal without trial or showing of an irremediable defect precluding due process, caused solely by plaintiff, deny constitutionally mandated due process of law?
5. Is a doctrine of discretionary procedural dismissal unconstitutionally over-broad in civil rights complaints?
6. Does judicial failure to recuse, misrepresentation of fact, striking of proper pleadings, and denial of process on false pretenses warrant the finding of abuse of discretion where defendants include a judge and magistrate of the same court?
7. Is this conduct of the lower court inconsistent with the good behavior mandated by Article III Section 1 of the U.S. Constitution for continued employment of federal judges? Will this Supreme Court initiate proceedings to investigate, censure, and remove the named magistrates and judges of the lower court for willful abuse of discretion?
8. Will this Supreme Court join the United States as a defendant in this action, acting through the judicial branch to deny Constitutional rights of the plaintiff and others, and thereby taking private property? What court has jurisdiction in cases of takings by the judicial branch by denial of process?
9. Does the use of noisy off-road hobby vehicles near residences constitute private nuisance? Does municipal permission thereof constitute taking of private property?
10. (de novo decision) Will this court find the defendants liable for the damages detailed in the complaint, and order them to make the compensation demanded?

PARTIES

P1. Plaintiff John Barth is president of Springvale School ("School"), a Maine corporation which since 1992 has been renovating the former upper campus of Nasson College in Springvale, to operate there a college preparatory school. Barth is a resident and owner of land in the town, and possesses reversionary rights to the campus, adjacent to the subject railbed. Springvale School will provide scholarships; jobs for its community; and sponsorship of thousands of orphans in the developing nations, a major charitable program. Plaintiff has dedicated all his time and resources for over twenty years to the founding of this school.

P2. The term "plaintiffs" includes parties to be joined.

P3. Defendant Town of Sanford including the village of Springvale is a former mill town in York county, Maine, sued in its governmental and its non-governmental capacity.

P4. Defendants the Inhabitants of the Town of Sanford are sued in their capacity as members of a municipal corporation holding property in common for their private benefit.

P5. Defendants John Doe (to be joined; name unknown at filing date) and Daniel Casey, of 15 Kirk St., Springvale, ME 04073 are sued in their individual capacities.

P6. Dismissed defendants Gene Carter and David Cohen are a judge and magistrate of the federal district court for Maine.

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Orders Entered

Date	Court	Item
12/29/04	U.S. Court of Appeals, First Cir. File No. 04-2009 (affirming dismissal)	Judgment
7/13/04	U.S. District Court, Maine CV-04-55 (dismissal)	Judgment
6/22/04	U.S. District Court, Maine	Magistrate 2
4/22/04	U.S. District Court, Maine	Magistrate 1

Jurisdiction

The judgment brought for review was dated 12/29/04; this petition is brought within 90 days of the date of judgment, in accordance with RSC Rule 13.1 and other provisions of the Rules of the Supreme Court.

Jurisdiction of the United States Supreme Court is conferred by Article III sections 1,2 of the Constitution of the United States; 28 USC §2106 confers jurisdiction to modify or reverse any judgment, decree, or order of court lawfully brought for review; 28 USC § 1254(1) provides for review by this Court of cases in the U.S. courts of appeals by writ of certiorari, under which jurisdiction is invoked in this case.

Provisions of the United States Constitution

Amendment V:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

Amendment XIV Section 1:

> "Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article III:

> "Section 1. The judicial Power of the United States shall be vested in one Supreme Court, and such inferior Courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, ***."
>
> "Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties ***."

Statement of the Case with Pertinent Facts

This action is undertaken to protect a charity (Springvale School) being founded by the plaintiff, and tens of thousands of orphans who are its future beneficiaries, against the taking of their private property interests for public use without just compensation; and their rights to due process and equal protection. Basis for jurisdiction in federal court of first instance is the federal issue, violations of 42 USC §1983.

The school's charitable program will sponsor about 2000 orphans at children's homes in the developing nations, providing their housing, food, clothing, medical care, and education for a secure future. As these orphans spend an average of about ten years in children's homes, each year about 200 orphans will (or will not) be saved from the streets and brothels of the poorest nations, and instead enjoy a happy childhood and a secure future solely because the school was (or was not) able to defend its constitutional rights in property in the federal courts, about ten thousand orphans in the school's first fifty years of operation. The lower court sought to suppress this information from the public record.

Defendants have caused, maintained and extended a nuisance, the use of extremely noisy off-road hobby vehicles (ATVs, motorcycles, and snowmobiles) upon a former railbed to which defendant town claims title, which passes through a now residential area of the village of Springvale and town of Sanford. When these vehicles are nearby, plaintiffs cannot sleep, read, talk, study, listen to music, or relax; and are forced to close windows during the summer. Until this nuisance has been permanently halted, the original Plaintiffs cannot enjoy their residences; and the documented severe noise on the Springvale School campus precludes its use for educational purposes (see Exhibits). Municipal nuisance effects a proscribed state taking of property [19, 35, see Memorandum of Law].

Efforts by plaintiffs and others to seek redress by petitions, polls, administrative and political means have been opposed by defendants, by means of harassment, threatening, massive vandalism, arson, and assault against the plaintiff and Springvale School, to obstruct justice and further deny their constitutional rights. Defendants have so damaged Springvale School with their crimes, and have so abused and threatened to abuse municipal power to prevent opening the school, that the school must be relocated to facilities beyond any powers of defendants.

The School and its charity program are extremely practical, realistic, properly planned and budgeted, and the School would have opened in 1999 or soon thereafter but for the crimes of the defendants. Its campus now stands only partially renovated, vandalized, and empty. Thousands of orphans whom it is to support are on the streets and in the labor camps and brothels of third world cities, their lives ruined by these defendants and judges. This state of facts is agreed by the most informed and competent persons and challenged only by irresponsible and hypocritical persons.

This matter has never been heard in court despite several prior state and federal actions against the *continuing* crimes and offenses of the defendants, seeking compensation for the extortion of private property interests from the plaintiffs by the defendant town for public use.

Any honorable court would have leapt to the defense of a charity against such plain abuses of essential property rights. Instead the state action (York County Superior Court CV-99-265) was dismissed on a false claim of excessive complaint length (a mere 29 pages) by a judge (Fritsche) having financial and personal involvement with the defendant town and its officials. Class action 01-208 for *offenses subsequent to the state action* was dismissed in the US district court for Maine on the absurd pretext of res judicata by defendant magistrate Cohen (having a private business relationship with the state court judges and also with counsel

for defendants) that this could include even *distinct* offenses *subsequent* to the state proceedings which were between *distinct* parties and never *tried*. The district court was shown very clearly and with every precedent [2 to 4, 6, 8 to 15, 17, 18, 20, 22 to 26, 28, 30, 36 to 38] that *none* of these three established necessary criteria of res judicata were met by *any* of the 37 claims, it but made the perjured claim *without argument* that *all* of the criteria were met by *all* of the claims. Does United States law hold that a second robbery of the same bank, or a second robbery by the same robber, cannot be prosecuted only because a similar incident occurred first? Obviously not: there has never been such a principle of law. Of course that corrupt magistrate would instantly switch to the standard definition of res judicata if his *own* property was stolen or destroyed more than once by the same party.

The plaintiff's school offices were being attacked frequently by town gangs *with the assistance of the town police* and *during these proceedings*. The district court ignored the charges of crime and refused to seal proceedings. These prior perjuries and gross prejudices proved beyond any reasonable doubt the corruption of the defendant judge Carter and magistrate Cohen. Despite very clear evidence and argument and the numerous serious and obvious errors of law and contradictions of precedent in that decision, it was affirmed as "cogent" *without argument* by the court of appeals (01-2756), and twelve grave questions of law were denied certiorari by the Supreme Court (02-28), a silence which spoke volumes about the state of the federal judiciary.

This fictitious pretext for underwriting crimes against humanity was intended to conceal judicial prejudice, hypocrisy, and corruption. These are historic betrayals of the people of the United States and their Constitution.

Thus the United States acting deliberately through its judiciary made itself the principal in the taking of those plaintiffs' property by denial of its defense against being taken by third parties, *the primary criterion of taking by force* used

by the United States now and for centuries past, in every case in which its *own* property or that of its citizens has been taken by denial of the private, military, or legal defense against its taking or destruction by private, state, federal, or foreign third parties or by natural processes. Therefore action against the United States was filed in the court of Federal Claims (02-CV-1478), elucidating the history of such claims and the principles by which all entities including the federal government have been held accountable by the US judiciary throughout its history to the present for causing the taking of property by third parties, by denial of its defense. That court, the district courts, and this court have consistently made decisions on behalf of plaintiffs in cases such as this one [5, 7, 21, 27, 29, 31, 34, and 40], so long as the *judicial branch* was not the party denying the defense of the property. Now the U.S. judiciary stood clearly convicted by its own declared principles and prior decisions. But it dismissed the case on the false pretense that it would have to impermissibly review district court proceedings to decide whether a taking had occurred, although it had been shown that this is not true except in cases of explicit takings of property as in satisfaction of a claim. Of course review could only establish the *rationale* for taking and is immaterial to finding the *fact* of taking by third parties due to a federal judgment denying process. The courts do not review the rationale for bank robberies, they determine only the facts. This decision was a self-serving perjury intended to conceal the guilt of the judicial branch. Again the action, appeal (Fed.Cir. 03-5063) and certiorari (Sup.Ct. 03-469) were denied despite the failure of these courts to present any argument against plaintiff's, and despite their own precedents in favor of plaintiff's case. That decision in effect asserts that the United States *must be joined by the court of appeals* in such a case, because it could not be a party until the district court had denied mandated process in defense of the property. As a result of that abdication of jurisdiction the United States must

be joined in this action (Question 8), or a writ of mandamus issued to require the Court of Federal Claims to accept jurisdiction and reinstate 03-5063. In the event that the judicial branch continues to act as a prejudiced judge in its own case, denying any jurisdiction, foreign parties to be joined must proceed against the United States in the World Court for this systematic denial of human rights.

In addition to the severe nuisance offenses previously litigated, the defendants have also engaged in a continuing campaign of hundreds of serious crimes against the plaintiff and Springvale School during those several years of litigation, including extreme harassment, threatening, massive slander campaigns, and violent assault against the plaintiff, and numerous acts of massive gang vandalism and arson at his charity school, both directly by their employees and by soliciting, facilitating, protecting, and ratifying such crimes by their corporate members, to deny the plaintiffs their rights to due process and equal protection of law, and with the intent of extortion of their property for public use without just compensation. Massive destruction has occurred inside and outside the school buildings, all school vehicles and equipment have been destroyed or stolen, and the campus has become a fortification with every window covered and doors bolted and barred, with 24-hour security, automatic video monitoring, and extensive intrusion detection equipment inside and out (see photographic exhibits in the record). Of course no school can operate under these conditions, nor under the continuing noise nuisance. These crimes are time-related to events in the actions, are detailed in the Complaint, and have continued even during preparation of this appeal, in the form of night gang attacks upon the School by the town, of which three have been photographed. The defendants' criminal gangs continuously seek to destroy or circumvent the school's defensive measures and often track the movements of the plaintiff. The defendants have caused in excess of one million dollars of physical damage, and over three million

dollars of damages due to delays, with the effect of preventing altogether the opening of the school at its campus in Springvale, Maine, total damages estimated between fourteen and twenty million dollars not including other consequent damages to plaintiff. This crime and systematic denial of constitutional rights, in which the United States is now again a principal, is the subject of the present action.

In all of these actions the defendants have obstructed due process by their extremely aggressive and ubiquitous dishonesty. Hardly a sentence in their pleadings and oral argument has been without some new lie about the facts or the prior course of proceedings, requiring the plaintiffs to make lengthy refutations of the new and previous lies and false arguments in addition to presenting their arguments. In addition, the defendants have made extensive use of smear tactics and back-door channels at the courts via their corrupt attorneys, police employees and town newspaper reporters.

The multiple actions and somewhat longer than average pleadings in this matter have resulted entirely from this never-ending and multifaceted criminal conduct, complete disregard of rights, and ubiquitous and profound dishonesty of the defendants and their agents and employees, and by this prejudice, corruption, hypocrisy, and betrayal of humanity and of the Constitution by the lower courts.

This district court action CV-04-55 originally named magistrate Cohen and judge Carter of the same district court as defendants in consequence of their willful and outrageous abuse of office in the prior action so as to facilitate the criminal acts of the present defendants. When plaintiff filed this complaint, the district court clerk told plaintiff that he would speak with a judge concerning recusal of district court judges, and then returned a few minutes later and stated to another clerk "They're just going to dismiss it anyway." Before the complaint was even read. *Therefore the frivolous issues later cited by the magistrate and judge are pretexts and perjuries of no significance in the case at all; only the*

parties matter to them. No reasonable doubt of the corruption of the district court could be further entertained [1, 39]. As a result, the plaintiff voluntarily dismissed without prejudice the corrupt judge Carter and magistrate Cohen of the district court, to preserve what little hope remained for the future of the tens of thousands of desperate orphans the School is to support.

As in all prior action, to obstruct this proceeding the defendant town submitted frivolous motions to dismiss based entirely upon lies and insane quibbling about complaint format. On the absurd pretext that it has now committed such a great number of crimes that simply answering a statement of its countless crimes should be considered an unreasonable burden, the defendant town refused to make the Answer required by Rule 7(a) or even to submit a Motion for more definite statement as required by Rule 12(e). Defendant counsel knew the court's intent to dismiss the complaint *regardless of the facts*, and offered only a pretext.

The magistrate (Kravchuk) *completely ignored the extreme gravity of the organized felony crime campaign against a charity detailed above,* and made a frivolous recommendation [Appendix G-1] that the original complaint be abbreviated by deletion of 8½ pages of potentially objectionable material [G-4 to G-6]. In fact all but 2 pages of this material established the charitable nature of the school, past crimes of the defendants against the plaintiff and the School, and other material facts about the defendants. Kravchuk admitted that a complaint of this nature "is by no means easily stated" [G-6], and that the complaint was largely factual and "not unintelligible" [G-3], and that defendants could certainly "craft an artful response" [G-4], but recommended abbreviation with no "specific page limit" [G-6] stating that the complaint was "prolix and peppered with inappropriate references [G-7]. But neither defendant nor magistrate could *identify* any verbose or scandalous matter, and the complaint was legally sufficient [32, 33]. Kravchuk

then *ignored not only the gravity of the causes of action, but also her duty to judge grave causes solely upon their merits, and unmistakably evinced the court's corrupt intent,* by recommending *dismissal* of this action for any departure from these frivolous and inequitable *format* demands [D-7].

On 5/4/04 judge Singhal ordered abbreviation of the complaint in accordance with the magistrate recommendation despite objection that most of the matter was necessary and proper [Appendix F-1]. There can be no rationale for such an order but the most extremely minimal convenience to the defendants, an outright confession of the most extreme prejudice in the matter; the intent was to force the deletion of essential fact and to set the stage for the further judicial perjury of an uncooperative plaintiff.

But all of the recommended changes *were* laboriously made by the pro se plaintiff, and the Amended Complaint [Appendix J, separately bound] was timely filed. Despite its complexity the complaint was abbreviated exactly in the manner requested, at some risk to its completeness, to a mere 27 pages and 11,434 words. To prove the deletions, paragraph numbers were not changed. A thorough reading of the amended complaint requires about three hours if notes are being made, about one second for each of the orphans whose lives will be saved by the School in its first fifty years.

In contrast, defendant Casey belatedly filed three hand-scrawled *unformatted* letters [appeal, Appendix H-1, L-1, M-1], *meeting none whatsoever of the requirements* for format and service of pleadings let alone motions, which the district court indulgently accepted as *motions*. Note that both the plaintiff and defendant Casey are represented pro se in this action, but that the most grave possible defects of pleading were completely *ignored* for Casey, whereas the most insignificant possible quibbles about plaintiff pleading were ordered to be taken as irreparable and *fatal* to this great charitable effort. The corrupt intent of the district court judge and magistrate was at this point beyond reasonable doubt.

Aware of the court's intent, the defendant town merely raised still more frivolous objections to the complaint, that paragraphs which are not normally numbered were not numbered, that it was hopelessly confused by the absence of the very same numbered paragraphs deleted at its own request and by the court's order, and again made the ludicrous perjury that it could not answer the complaint as it was [appeal, Appendix Q-1]. *The magistrate had already held that defendant could answer the original complaint.* No attorney would risk his credibility in court with such frivolous objections unless certain that the court cared not in the least for their validity. And in every instance where material was removed at the request of defendant town, it then claimed that the complaint was now insufficient for lack thereof.

Although now *admitting* not only that the complaint was factual, intelligible, and answerable by the defendants, but also that it had been abbreviated substantially in accordance with her own recommendations [Appendix D-2], *the magistrate again ignored the extreme gravity of the causes of action, ignored the Constitutional mandate for due process, ignored her sacred duty to judge grave causes solely upon the basis of their merits,* lied about the rules of civil procedure and the precedents, and outrageously recommended dismissal on the basis of the *still more frivolous* town perjuries [Appendix D-2] and her own grotesque perjury that the terse 27-page double-spaced complaint was now somehow too "wordy" [Appendix D-1] to permit process to save the lives of tens of thousands of desperate orphans. Indeed it contains about one word per orphan whose life would be saved by the School in its first fifty years. The reading time of the plaintiff is certainly at least as valuable as that of one of the 900 federal judges, or of the worthless defendants. A glance at the scrawled Casey letters proves beyond doubt the corrupt intent of the lower court. The magistrate concluded "The defendant is entitled to know what the operative current factual allegations are in order to

properly frame a responsive pleading" ineptly quoting the version of her dismissal argument to be used in case the facts *had* been deleted, although she was *still demanding deletion of the facts*.

The district court judgment in this action dated 7/13/04 accepted *without argument* the magistrate recommendation of dismissal. In relying upon such a recommendation the judgment contradicts the law and the facts *on every point*. Here again we have the sordid and nauseating spectacle of corrupt and hypocritical judges falling over themselves to violate every aspect of their oaths and duty, to serve purposes which could not be more profoundly and manifestly corrupt, to the injury of a cause which could not be more meritorious or much more properly presented.

No intelligent citizen of goodwill apprized of the facts of this matter has failed to see instantly that this decision proceeds from judicial corruption. Some have wondered whether the corruption serves a political agenda, or credits the usual smear campaign of these corrupt defendants, or includes some naïve or prejudiced "investigation" of facts, but the fact of judicial corruption is unmistakable.

This decision was clearly based upon the proscribed influences of *personal and political prejudice*; *envy* of the plaintiff's humanitarian accomplishments and *the desire to sabotage his school* to rationalize the selfish lifestyle of the judges and the defendants; *envy* of the plaintiff's celebrity father (who has written novels over *eighty times* as long as the amended complaint); complete *misinformation and prejudice* about private schools and charities and noise nuisances; *gross naivete* about crimes by town governments; the *desire to conceal* prior judicial crimes; *prejudice* against pro se plaintiffs; and *outright opposition to the constitutional rights of the people*, all in diametrical opposition to the good behavior required for the continued employment of judges by Article III Section 1 of the federal Constitution. The plaintiff does not mistake the motives of these courts. The high crimes of these courts for the third time placed an extraordinary and

unreasonable burden upon the Plaintiff to defend his rights and those of the orphans whom his School is to support.

Appeal 04-2009 in the first circuit court of appeals clearly and patiently elucidated the profound wrongs of the district court decision. As in the first case, it was rejected (Appendix A) *without consideration of any of the issues presented, ignoring all of the evidence and argument presented, with the motive of concealment of judicial crimes,* echoing the absurd pretext that plaintiff had "made only a half-hearted effort" to comply with the magistrate's corrupt, inequitable, and unconstitutional demands, a direct contradiction of the facts before that court. It made the further outrageous attempt to cover its crimes by the pretense that this sordid history of judicial corruption was merely a "pattern of litigation" by the plaintiff. This was a self-serving, hypocritical, corrupt and unconstitutional decision, meriting only the prompt dismissal of the judges involved.

For it is the duty of judges to serve justice, not that of aggrieved plaintiffs in grave causes to entertain and provide minor conveniences to judges or defendants. Those grave causes must be judged solely upon their merits, not upon frivolous and immaterial points of presentation. A judge who complains of inconveniences of pleading in a grave cause does not embrace his duty, and one who places such concerns above his duty to determine causes justly, is manifestly unfit to judge.

Failure to reverse would establish a precedent for the selective, arbitrary and capricious abrogation of essential constitutional rights by means of perjured judicial allegations of immaterial technical flaws in pleadings, an established and ominous pattern of this corrupt district court and the court of appeals. Failure to reverse, whether by decision or denial of certiorari, would represent a direct and deliberate attack by this supreme court upon the sacred constitutional rights of the people of the United States. The implications for the future of this republic could not be more grave.

Preamble

Lawyers and clients in extremis fear this court and pay it undeserved homage, but these actions have already shown that justice cannot be obtained in this court. The time has come for the people to correct these betrayals of themselves and their Constitution by an unregulated federal judiciary.

In this action the district and appeals courts have dared to assert, in direct contradiction of their own rules, and of their own principles and conduct in other cases, that the plaintiff may not use even 27 pages of double-spaced text to present numerous grave violations of the constitutional rights of a charity. They dare to assert that they may deny the due process of law mandated by the Constitution on the basis of their own criminal and outrageous refusal to read a clear, concise, and standard document no longer than a short story, to save the lives of 10,000 orphans in the developing nations. The judiciary so deprecates humanity that it refuses to spend one second of time, to read even one word to save the life of an orphan, and in so doing *they have appraised themselves*. They have invented equally unlawful and unconstitutional rationales to dispose of two related actions in defense of these orphans, all fought tirelessly, some say with selflessness and courage, through the lower courts to this supreme court.

These judges have scorned the covenant of natural law, whereunder the power of government derives from the consent of the governed, and have affected to substitute an arbitrary and capricious prerogative for the will of the people embodied in their Constitution.

Good citizens may well wonder what process has led to these plain denials of constitutional rights by the judiciary. But a candid study of history shows that such abuses are by no means new or limited to cases such as this one. The judicial branch has consistently opposed the rights of the people until forced to comply with the Constitution. It has

delayed for generations every development of human rights in the areas of slavery, labor rights, suffrage, and civil rights with cynical judgments in the service of wealth and self interest, which shock the conscience of all informed citizens of good will. It has caused far more injury to the United States than all of its military enemies throughout its history. It has done so because the Constitutional Convention neglected to provide checks and balances over the judicial branch to match those of the legislative and executive branches. It has survived unreformed like the classical tyrants, because the ignorant accept its false claim to be their protector, and because it attacks the few and the powerless, and in so doing destroys the rights of all citizens, never damaged by foreign powers. This court has historically failed to rise above the subculture of hypocrisy and corruption endemic to the judicial branch. Condemnation of the judicial branch of the United States, already rendered by its own intelligent citizens, is the almost inevitable final judgment of history and of the future.

In these actions the district and appeals courts have with unspeakable hypocrisy and corruption ratified and underwritten a campaign of felony crime against a charity. They have purposed to destroy the lives of tens of thousands of helpless orphans so as to conceal their past crimes. The conduct of the federal judiciary in these actions merits the strongest sanctions available to the people. In these actions alone a large part of the judicial branch has again proven to the people of the United States and to history its abject and unparalleled hypocrisy, its perfected and absolute corruption, its moral degeneracy and its high crimes. The questions here presented to this supreme court are addressed to any of its present members who may have the courage and integrity to defend the Constitution. But this petition is addressed primarily to history and to the betrayed people of the United States, who shall finally cleanse the temple of the federal judiciary, and provide those checks and balances so tragically neglected by the Philadelphia Convention.

Argument for Certiorari

The petition presents grave issues of deliberate procedural interference by the judiciary with civil rights actions, and specific questions of judicial conduct, federal liability jurisdiction, and nuisance. As no findings of fact nor application of principles of law have been made in this matter, except upon procedural questions, these are not the basis of this petition.

The jurisdiction of the Supreme Court is traditionally invoked where a decision of a U.S. court of appeals or state court of last resort has decided an important federal question in a manner inconsistent with either prior rulings of this court, another court of appeals or state court of last resort, or accepted practice; or where such question has not been, but should be decided by this Court. (Rule 10).

Questions 1 through 6 merit certiorari due to conflict of the judgment under review with prior decisions of this Court per Rule 10(c.), and with decisions of the U.S. courts of appeals and state courts of last resort per rule 10(a) and 10(b). These questions also merit certiorari to prevent sanction by the judgment under review of such departure from the accepted course of judicial proceedings, as to call for exercise of this Court's supervisory power.

Questions 3 to 9 present issues not yet decided, but which should be decided, by this Court per Rule 10(c.).

Judicial Denials of Constitutional Rights
(Questions 1 through 6)

It is sufficient to decide one of these questions to reverse the decision; all may be reached to clarify the issues.

Question 1

This Court has very recently affirmed (*Swierkiewicz v. Sorema* [33](2002) that sufficiency of complaint requires no more than the FRCP Rule 8(a) "short and plain statement of the claim," to "give [defendant] fair notice of what [plaintiffs'] claims are and the grounds on which they rest." That rule does not preclude additional material, nor does the presence of many claims, copious evidence or several arguments argue that a complaint does not contain a short and plain statement of each claim (see *Complaint* Counts), thereby enabling a defendant to answer. *FRCP Rule 8(e) directly prohibits limitation of the number of claims, facts, and arguments.*

Even under the Maine rules of civil procedure a complaint is held constitutionally adequate

> "if it contains such plain, concise and definite allegations of the essential facts constituting the offense as shall adequately apprise a defendant of reasonable and normal intelligence of the act charged, enabling him to defend himself and, upon conviction or acquittal, to make use of the judgment as the basis of a plea of former jeopardy, should the occasion arise." *State v. Carter* [32] (Me 1982)

Neither Maine nor federal rules limit original pleadings in the number of claims, facts, arguments, defenses, or length.

Although material which is redundant, impertinent, or offensive may of course be stricken from pleadings where it may substantially interfere with process, there is no legal ground for denial of process on such a basis unless such

material precludes process, and is present entirely due to faults of the plaintiff, and cannot be remedied by further process. That inherently rare and extravagantly implausible exception is considered in Question 4.

For the purposes of this question, the complaint need only be found to contain these necessary elements of a complaint, and to be in such form that the defendants may answer. The lower court in this action conceded that the defendants could in fact answer the original complaint [Appendix G], and that furthermore the amended complaint substantially complied with the court's order to delete or modify certain material [Appendix D].

The lower court's only remaining objection was to an alleged "verbosity" of which it could find not even one instance, and of which no 27 page double-spaced complaint, which has already been found to consist largely of fact, and which the defendant has already been found able to answer, could contain an amount sufficient to preclude process. The amended complaint [Appendix J] is in fact very concise. The question of length or verbosity is considered in Question 3.

The finding of the lower court that defendants could answer even the original complaint would appear to answer this question. Answering a complaint of many claims and facts is already simplified by the rules and by accepted practice. Defendants must fairly address the substance of each claim but may make summary denials or statements that they have insufficient knowledge to form an opinion on several claims or facts. Therefore the presence of material additional to the short and plain statements of each claim does not prejudice the defendants nor violate the federal rules of procedure, and the complaint is constitutionally adequate even under the findings of the lower court. The decision of the lower court conflicts with prior decisions of this court, the courts of appeals, and state courts of last resort.

Questions 2 through 5 consider the extreme and extravagantly implausible exception claimed by the lower court, that a 27 page double spaced complaint in standard form may still somehow be of such excessive length, even in the case of numerous claims, facts and complex law, and despite tireless efforts of the plaintiff to abbreviate it, as to completely preclude process, and whether this may operate to permanently deny rights guaranteed by the Constitution, and to destroy the lives of tens of thousands of orphans for a hypothetical minor convenience to the court or defendants.

Questions 2, 3, and 4

In this case a clear, concise, and well organized complaint in standard form [Appendix J] was dismissed without trial or even answer, on the pretext that it was too much work for the defendants to answer a pleading of 27 double-spaced pages or about 10,000 words, of lesser size than prior federal pleadings to which defendants did not even raise the objection, and about two-thirds of the size limit for appeals briefs which are normally shorter documents. There is no size limit for original pleadings in the federal courts. The lower court had already held that defendants could answer the original complaint, and that plaintiff had substantially complied with the court's order to abbreviate or modify certain material. None of the claims were recognized by the court, answered by defendants, tried, nor even mentioned in any judgment.

This Court has not yet ruled upon the allowable criteria for procedural dismissal of civil rights complaints (question 4); nor upon the use therein of criteria such as length of pleadings (questions 2 and 3); nor whether a doctrine of discretionary dismissal of civil rights complaints denies constitutionally mandated due process (question 5); nor the effect therein of refusal of an interested judge to recuse, of striking of necessary pleadings, or judicial

misrepresentations of fact (question 6). Related rulings of this Court and the courts of appeals have been made, with which this judgment conflicts gravely. Cases wherein complaints of far greater length and significant verbosity have been allowed are too numerous to mention, and in this action the defendant pleadings are longer relative to content than those of plaintiff.

Permanent denial of process without trial where due process is guaranteed by the federal constitution requires showing that *no other course was possible* (question 4), not that it was merely convenient: that circumstances due *solely* to plaintiffs *precluded* process, and that the defect was and must always remain *irremediable* despite any further process. None of these highly unlikely circumstances is remotely applicable to this case, nor even asserted in judgment.

Dismissal for length of complaint fails these criteria and therefore denies due process: the 27 page length was due to factors entirely *beyond the control of plaintiff* (number of offenses, concealment by defendants, and complexity of law); the length *in no way precluded process* (the claims were stated concisely); and length *is not irremediable* even when unnecessary. The magistrate order to remove essential material was clearly abusive and unnecessary, precluded by Rule 8(e)(2), and had nonetheless already been complied with diligently and to the extent possible by the Plaintiff.

The district court simply lied that the terse amended complaint was "verbose" for having failed to delete all references to the orphans whose lives it sought to quietly destroy for the private gain of the defendants. It could not find *any single instance* of verbosity, let alone enough to mention, let alone enough to strike, let alone any such basis for denial of process altogether, and feared public exposure of its corruption if it dared mention the statements about the orphans. It refused to distinguish between verbosity and the necessary causes of complaint length, none of which are the fault of the plaintiff. No finding was made of any irremediable defect in the complaint due solely to plaintiff which precluded

due process. No argument was made that discretionary procedural dismissal without trial would somehow discharge the due process requirement (questions 3, 4). *The lower court in fact found that defendant could read and respond even to the original complaint* and even more complex and lengthy prior complaints, and even found that the plaintiff had substantially complied with its order to abbreviate or modify certain material, yet in this case with no further excuses at hand it claimed that defendant should not be troubled to answer for a mere 10,000 orphans' lives.

Clearly this was due to abject corruption of the court, not to any inability to understand these simple issues so clearly and concisely elucidated for its convenience time and again. The plaintiff was deliberately denied his constitutional rights, and the tens of thousands of orphans were denied their lives, by an utterly corrupt and hypocritical judiciary with a private agenda and personal interests in the case.

Even more fundamentally, no constitutional rights claim, implicit or explicit, may be dismissed "with prejudice" without trial, whether by rule or discretion, because this by definition denies the right itself, and due process, and conflicts directly with 28 USC § 2072. No legal doctrine, definition, precedent, rule, or procedure can nullify constitutional rights. The rule making power of the Judicial Branch is circumscribed explicitly by 28 USC §2072(b) to rules "*which shall not abridge, enlarge or modify any substantive right*" such as the plaintiffs' Amendment V and Amendment XIV rights in property and rights to due process and equal protection so clearly violated by the defendants.

The present case shows that, without ruling by this Court, a district court can and will dismiss any complex case at its pleasure and in accordance with its personal politics and private agenda, on the absurd pretext that either reading it is too much trouble for defendants, or that it was abbreviated too much to make the case. Almost no civil rights case involving environmental law, numerous parties or offenses, or

complex liability could be conducted if sanction of such discretionary dismissals is not reversed (question 5). Failure to reverse, whether by decision or denial of certiorari, would represent a direct and deliberate attack by this supreme court upon the sacred constitutional rights of the people of the United States.

Question 5

If construed to preclude litigation against a present abridgment of constitutional rights, any doctrine, including a convenience criterion for dismissal, is unconstitutional.

Discretionary dismissals of civil rights complaints are directly prohibited by the Constitution, the Civil Rights Acts, and 28 USC § 2072. Such abridgment of rights is not within the powers allocated to the judicial branch by Article 3 of the Constitution of the United States, is directly prohibited to the judicial branch by the terms of 28 USC § 2072, is not within the powers of the states under Amendment XIV, and is prohibited to all persons whatsoever by the terms of 42 USC § 1983 et seq. These prohibitions could not be more inclusive, nor more firmly grounded in United States law.

The present case shows that in 2004 a U.S. court of appeals sought to prevent enforcement of the Civil Rights acts, and has sanctioned aberrant procedural interpretations under judicial doctrines twisted so as to be repugnant to all citizens aware of the foundations and operation of good government, and in direct violation of the Constitution, the Civil Rights Acts, and 28 USC § 2072 which explicitly prohibits such rulings. After over two hundred years of development, the law of the United States is quite clear on this point: the interpretation of judicial doctrine or procedural rules to deny constitutional rights is simply not within the powers allocated by the Constitution to the Judicial Branch.

The grave and pervasive conflicts of the judgment under review with decisions of this Court, the U.S. courts of

appeals and state courts of last resort call for certiorari: The false doctrine of arbitrary procedural dismissal of civil rights cases should be repudiated, and the judgment reversed.

Clearly the practice of discretionary dismissals of civil rights complaints, regardless of judicial doctrine or rationale, could not be more unlawful, more unconstitutional, nor more repugnant to the people of the United States, to the world, and to history. Failure to repudiate this doctrine of discretionary dismissals of civil rights actions, whether by decision or denial of certiorari, would be a direct and deliberate attack by this supreme court upon the sacred constitutional rights of the people of the United States.

Question 6

Regarding the due process effect of refusal of the interested judges to recuse as friends and colleagues of two defendants and defense counsel, this Court has ruled that a judge having a direct or personal interest

> "acted as 'a judge in his own case.' His interest in this case was 'direct, personal, substantial, [and] pecuniary,' and 'violated appellant's due process rights.'" *Aetna Life Insurance Co. v. Lavoie* [1] citing *Ward v. Village of Monroeville*, [39] 57, 60)

The documentary and other evidence in this case establishes the personal interest of the district court judges, thus invalidating their decision. The appeals court has allowed judges with personal interests in the case to substitute their concept of "full and fair opportunity to litigate" against their friends, for the judgment of the Supreme Court.

This decision of the judgment is a procedural attack upon the rights of citizens, which should be reversed. The supervisory power of the Court should be exercised to correct this abuse.

Questions not yet Decided by this Court

Question 7

The argument for this question, turning upon interpretation of "good behaviour" in Article III Section 1 of the U.S. Constitution, rests upon the universal recognition that the travesties and crimes of the named judges and magistrates could not be more unconstitutional, and merits their dismissal from federal service.

Question 8

This question is more significant and subtle than may at first appear. Reversal of the lower court decisions affords the federal government opportunity to avoid becoming the principal in the taking of private property for public use by the defendant third parties, by denying plaintiff's defense of property in lower court against third party taking. Such acts are very distinct from judicial takings in satisfaction of claims. Federal judicial denial of constitutionally mandated process in defense of property against third party taking, regardless of whether in accordance with doctrine or accepted practice, denies the defense of private property and is the act of a principal in the taking. Such acts may serve government goals but are regulatory takings of property by the United States, for which the Constitution mandates just compensation.

The court of Federal Claims, the district courts, and this court have consistently made decisions on behalf of plaintiffs in cases such as this one [5, 7, 21, 27, 29, 31, 34, and 40], so long as the *judicial branch* was not the party denying the defense of property.

The question is of special significance because in prior related action the Court of Federal Claims incorrectly denied jurisdiction over such claims originating from denials of due process by the same district court, although accepting

jurisdiction for such incidental takings of private property by the legislative and executive branches. The basis of this denial was the incorrect assumption that jurisdiction would require improper review of the proceedings of coordinate federal courts. In fact such takings are side effects of judicial denial of defense of property, not explicit judicial decisions to take property as in satisfaction of claims. It is the *effect of the acts* of the district court, not the *rationale for its proceedings* which denied the defense of property against being taken by third parties, and made the United States the principal in the taking. The Court of Federal Claims need only find that such an incidental taking *has occurred*: any review of proceedings which incidentally effected such takings by the judicial branch would be as immaterial as it would be to determine the rationales for taking in a case of theft or robbery. Hence no review of the proceedings of other federal courts is necessary for the Court of Claims to consider whether in this case the denial of due process by the lower courts has had the incidental effect of a taking of private property.

But because the United States government cannot be joined as a party in district court actions for the taking of private property by third parties, unless and until the United States becomes a principal in the taking by denying process and thereby the defense of that property against being taken, the acts of the courts of appeals for the First Circuit and for the Federal Circuit are contradictory on this point, requiring the guidance of this Supreme Court to decide the jurisdiction.

But this court denied certiorari for that question when petitioned from the court of appeals for the Federal Circuit, implying that it must now join the United States as defendant and ensure that the case against the United States is heard, or it will have violated Amendment V of the Constitution, by denying any jurisdiction to cases of property takings by the judicial branch itself without due process or compensation.

No legal doctrine, definition, precedent, rule, or procedure can nullify constitutional rights. The rule making

power of the Judicial Branch is circumscribed explicitly by 28 USC §2072(b) to rules "which shall not abridge, enlarge or modify any substantive right" such as the plaintiffs' Amendment V and Amendment XIV rights in property and rights to due process and equal protection so clearly violated by the defendants, a violation sanctioned by the judgment under review and the court of appeals. Regardless of the interpretation of doctrine and rules by the lower courts, failure of this court to reverse would make the federal government the principal in the deprivation of private property for public purposes for which just compensation will require over twenty million dollars.

If this supreme court will neither reverse nor join the United States as requested, whether by decision or by denial of certiorari, this shall prove the criminal intent of the judicial branch to dismantle the constitutional right against taking of private property for the benefit of third parties, by the subterfuge of denying any federal jurisdiction to the victims of systematic abuses of government power.

Question 9

This Court has not yet ruled upon the common law status of private nuisance created by noisy off-road hobby vehicles (question 9), wherein the state courts have provided widely varying protection of property rights in response to recent technology. The problem of noise pollution and property damage by ATVs, snowmobiles, and off-road motorcycles has emerged across the nation in the last decade, as the most serious problem affecting outdoor recreation and residential land use. This problem often surprises those affected, that a "mere nuisance" precludes essential use of private property and vacation time, and damages the value of residential investments upon which financial security depends.

This Court has held in *Kovacs v. Cooper* [19, 1] that operation of a "loud and raucus" sound truck is not protected

speech and can be a nuisance. The Court has affirmed in *United States v. Causby* [35] that frequent and regular flights of army and navy aircraft over private land at low altitudes constitutes a taking for public use. Numerous cases in the courts of appeals and state courts of last resort, as well as in the lower courts (see *Memorandum of Law* in this action), have established that high noise levels and the use of these specific vehicles near residences constitutes a private nuisance, and that municipal acts permitting such nuisances constitute takings of private property for public use. However, these rulings are not consistent, and so there has arisen a civil rights disparity from State to State.

The emergence of cases like the present one, of actual obstruction by states and state entities of actions asserting the Amendment V right against takings by nuisance, presents the need for guidance to ensure consistency of decisions under the Civil Rights act.

> "When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally-protected right."
> *Gomillion v. Lightfoot* [15]

Decision of the common law status of this nuisance will allow state nuisance statutes to operate as intended, and just compensation will be encouraged by clarification of the circumstances under which such nuisance has the effect of a taking for public use. The several issues are presented in full in the *Memorandum of Law* in this action.

For Petitioner:

John S. Barth, pro se, Petitioner
Dated this 31st day of January, 2005

Appendix A: Judgment of Court of Appeals, First Cir.

United States Court of Appeals For the First Circuit
No.04-2009

JOHN BARTH,
Plaintiff, Appellant,

v

TOWN OF SANFORD, ET AL
Defendants, Appellees

Before
Torruella, Circuit Judge,
Campbell, Senior Circuit Judge,
and Selya, Circuit Judge.

JUDGMENT
Entered: December 29, 2004

We have reviewed the parties' briefs and the record on appeal. There was no abuse of discretion in the district court's dismissal with prejudice of appellant's action, see Kuehl v. FDIC, 8 F.3d 905, 908 (1st Cir. 1993) , particularly after the magistrate judge had provided appellant with guidance in properly complying with the requirement of Fed. R. Civ. P. 8 and had warned that failure to file a compliant amended complaint would risk dismissal with prejudice. We agree with the magistrate judge's assessment that appellant made only a half-hearted effort to comply with the court's earlier directive and that the court's primary advice to reduce the verbosity was essentially ignored. Appellant's disregard appears deliberate as appellant's litigatory pattern reveals a persistent and willful refusal, both in state and federal court, to submit a complaint that complies with pleading requirements and enables a defendant to

properly frame a responsive pleading. Given the above and the lack of any plausible foundation, we reject as spurious and merely pejorative appellant's contentions of collusion between defendants and the district court.

The judgment of dismissal with prejudice is affirmed.

By the Court:

Richard Cushing Donovan

By: MARGARET CARTER
Chief Deputy Clerk

Appendix B: Judgment of U.S. District Court for Maine

This document merely rubberstamps the magistrate recommendation, failing to make any argument in opposition to the plaintiff.

Appendix C: Plaintiff Objection to Second Magistrate Recommendation

District Court of the United States
District of Maine
CIVIL ACTION No. CV-04-55-PS

John Barth,
Plaintiff
vs.
Town of Sanford, et al
Defendants

PLAINTIFF OBJECTION
to Magistrate Recommendation and
NOTICE OF POTENTIAL CRIMINAL ACTS
BY THIS COURT

BACKGROUND

This action is undertaken to protect a charity school and thousands of orphans who are its future beneficiaries. The defendants have engaged in a continuing campaign of hundreds of crimes over a period of several years against the plaintiff and Springvale School, for their convenience in operating hobby vehicles adjacent to the school, causing in excess of one million dollars of physical damage, over three million dollars of damages due to delays, and with the intent and effect of preventing altogether the opening of the school at its campus in Springvale, Maine, total damages estimated between fourteen and twenty million dollars, not including other consequent damages. As in all prior action, to obstruct this proceeding the defendant town has submitted frivolous motions to dismiss based upon lies and insignificant issues of complaint format.

This court ordered [23] that the original complaint be abbreviated in accordance with prior recommendations of the magistrate [16], with the deletion of certain material deemed immaterial or perhaps scandalous, or concerning claims prior to the corresponding statute of limitations. All of the recommended changes were made and the Amended Complaint [29] was timely filed. The defendant town raised new and still more frivolous objections and the magistrate has now recommended dismissal on the basis of ludicrous format objections applied only to this Plaintiff.

This action of is profound significance in bringing to justice defendants deeply guilty of extensive crime, and in enforcing the constitutional rights of a charity to the use of its property. It has strong potential to become an action of national significance in the area of judicial corruption. There is no further excuse for delay of this action.

OPPOSITION

The Plaintiff hereby objects to the magistrate recommendation of 6/22/04 as entirely frivolous, retaliatory, and made in criminal collusion with the present and prior defendants. Despite the good faith compliance of the Plaintiff with each and every one of the prior recommendations, magistrate Kravchuk has rubberstamped new and utterly frivolous format objections on the pretext that these are somehow significant in comparison to the hundreds of grave violations of law and constitutional rights which are the subject of this complaint. The pleadings show this recommendation to be without merit, factually false, and made in collusion with the defendants and the judges of this court originally charged in the complaint. The false objections are disposed of briefly below.

The Specific Recommended Abbreviations Were In Fact Made

The magistrate admits (p.3) that all recommended abbreviations were in fact made. The largest [16, p.4] were of paragraphs 3 to 7 concerning prior torts of defendants against plaintiff, condensed into paragraph 3; and of paragraphs 8 to 17 concerning the continuing nuisance tort, condensed into paragraph 8. Another 2½ pages of matter deemed immaterial, misplaced argument, or perhaps scandalous by the magistrate [16, p.5,6] was deleted or made appropriate.

The lists of facts, exhibits and argument supporting each count, required under Rule 8(a)(2) to show explicitly that plaintiff is entitled to relief for each claim, were incorporated into the counts with the usual wording. The magistrate had requested their deletion but now (p.2) criticizes their completeness in not listing supporting paragraphs 21 to 22 and 67 to 71. Plaintiff has complied with the order industriously and in food faith, and no fair objection may be made.

Objections to Paragraph Numbering Are Frivolous

The Amended Complaint uses the same paragraph numbering as the original complaint to avoid confusion and show compliance with the abbreviation order [23]. As noted above, this left paragraph numbers 4-7 and 9-17 unused. A paragraph (71) was added to describe continuing defendant crimes since filing of the action. Of course defendants are not required to answer deleted paragraphs as defendant town falsely objected. Its objection that the named summary, introduction, conclusion and demand are as usual not numbered was alike frivolous, and the claim that Counts I and II are not numbered was obviously false. No numbering of such items is required or necessary for any purpose, as these items are referenced by name.

The paragraph numbering is clear, sufficient to identify paragraphs for all purposes, and in no way prejudices

the defendants nor impedes answering the complaint. No fair objection of any weight can be made here.

The magistrate admits (p.2) that these specific changes were made "in order to comply with...my previous recommendation" and then absurdly objects (p.2) that the skipped paragraphs are "missing." Not one paragraph number is out of order or otherwise out of sequence as claimed by the magistrate (p.2). An attempt is made to buttress these false claims by another (p.1,2), that paragraphs which are normally named rather than numbered (summary, introduction, jurisdictional statement, conclusion, and demand for relief) should now be numbered. The magistrate then claims absurdly that this clear and ordinary numbering, which results entirely from her own recommendations, renders the complaint "confusing and sloppily drafted" (p.1).

Comparison of this crisp, clearly organized, and properly formatted Amended Complaint with the illegibly scrawled and completely unformatted letters [19, 25, and 26] purporting to be from defendant Casey, which the magistrate accepted as "properly formatted" motions, proves beyond any doubt that these false statements were made with intent to deceive the federal courts and the People. Every one of those defendant "pleadings" lacks almost every required element of a pleading let alone a motion, and is completely without formatting of any kind including numbering, printing, margins, and type face, and were not even served upon the Plaintiff. After such extreme tolerance of serious defendant informalities, the magistrate's persistent and utterly frivolous objections to the very proper formatting of the complaint clearly show grave prejudice and collusion with the defendants.

False Contention of Prolix or Discursive Prose

The magistrate admitted [16, p.6] that this type of action "is by no means simply stated," that the original

complaint was largely factual and "not unintelligible" [16, p.3], and that the defendant could certainly "craft an artful responsive pleading" [16, p.4], but despite the specific abbreviations already made, continues to claim that the Amended Complaint is "prolix" and discursive (p.2) without actually finding any wordy prose. This is an illusion due to the inherent complexity of the complaint. In fact each sentence of the complaint is tersely worded after many revisions. The large number of facts in such a case does not argue that any statement is wordy, and the fact that the crime campaign is a long story with related issues does not make its concise telling discursive. The wish that the facts could be fewer or more concise simply cannot be met.

A glance at the scrawled documents of pro se defendant Casey shows that the Plaintiff has made extraordinarily clear pro se pleadings, and has done his best. If indeed an attorney might find material which could be presented still more briefly without introducing a defect, this should not constrain a pro se party to performance beyond his areas of professional expertise. The Federal Rules suggest that pro se pleadings be construed so as to do substantial justice. Clearly in a matter of numerous grave crimes, endless rewritings requiring weeks of Plaintiff effort are completely unjustifiable on the grounds that a few minutes of reading time might be saved.

Number of Facts Per Paragraph

Here is another entirely frivolous defendant objection repeated by the magistrate. The original and the Amended Complaint group related facts into paragraphs in the usual and proper way. Dividing these into multiple paragraphs would fragment incidents and require redundancy. The defendant town motion claimed that many paragraphs contain allegations "too numerous to respond to." Obviously this

contention is false: if the statements are made in a paragraph, they can be answered in a comparable space.

The total number of allegations is in any case independent of their grouping into paragraphs, and all must be answered regardless of grouping. Rule 8(e)(2) specifically permits as many claims as the Plaintiff has, and Rules 7, 8, and 12 require the defendant to answer them. Claims occupying only twenty pages of fact can readily be answered; Rule 8 precludes excessive burden by permitting summary response where defendant has insufficient information. The defendant was encouraged to commit fewer crimes and torts to simplify pleadings. The crimes continue and the magistrate seeks to obstruct justice by elevating utterly inconsequential points of format so as to serve the criminal purposes of the defendants.

Line Spacing

Despite admission that every suggested abbreviation was made, the magistrate claims (p.3) that Plaintiff "preferred to condense his line spacing rather than his prose." In fact the word count was reduced about 20 percent from 13,789 to 11,434 by laboriously making every suggested abbreviation. This reduced the number of pages from 43 to about 33.

The line spacing was also changed because the magistrate recommendation stated [16, p.6] that "Neither the Federal Rules nor the Local Rules prescribe double-spaced formatting for pleadings and this Court's docket certainly contains many single-spaced complaints drafted by attorneys." Hence Plaintiff might have chosen single-spacing but instead chose 1½ -line spacing to make the complaint easy to read. This reduced the remaining pages from 33 to 27.

The line spacing change was made only after all suggested abbreviations, and then only in explicit accordance

with the magistrate recommendations. There is no fair objection here either.

Reduction of Factual Material in the Complaint

It should be clear that the defendants want factual material deleted precisely because it is necessary to the complaint. Defendant motions sought to suppress or divide into fragments the overwhelming facts, argument, and exhibits of their crime campaign, so that the events might appear unconnected or insufficient. As predicted in Plaintiff's objections, as soon as the complaint was amended in accordance with the prior magistrate recommendation, defendant town objected to the absence of each and every fact deleted at their own request, and sought dismissal thereby.

There are only 27 pages of complaint, and only 20 pages of facts to be answered. The defendant claim that a mere response to these statements of their salient crimes and related fact would overburden them, is a transparent ploy utterly without merit. Rule 8(b) precludes unnecessary burden by permitting the mere listing of facts as to which a defendant is "without knowledge...sufficient to form a belief." If any further clarification is required defendants must make a specific motion for more definite statement in accordance with Rule 11. The defendant must now answer the complaint.

Magistrate Quibbling Over Minutiae in a Case of Massive Wrongs is Unwarranted

Who can read these facts and view the photographs of these massive crimes against a charity for desperate orphans, crimes committed purely for the convenience and entertainment of hoodlums, and quibble about the trouble of a few minutes reading more or less? Why does the magistrate waste the time of the court weighing trivial inconveniences in

a balance against such heinous crimes? What person not in collusion with the defendants could even think of denying process altogether against this crime campaign exceeding all other crime in Sanford during those several years, crime which has much of the annual human cost overseas as the combined crime and accident rate of the state of Maine, on the ground that a minute or so of reading might be saved by still more brevity? It is unwarranted to entertain any but the most grave objections to such a complaint, whereas the magistrate posits only the most frivolous and simply false objections. The magistrate clearly seeks to obstruct this very serious and meritorious complaint.

CONCLUSION

The magistrate recommendation that the court "either strike large portions of this complaint or grant the motion to dismiss" is entirely without merit, unsupported by fact or argument, and directly implements the defendant town's tactics of obstruction of justice. The magistrate's original and present recommendations are deliberate acts of collusion with the present and prior defendants for the purpose of obstruction of the administration of justice with intent to assist their criminal extortion of property of the Plaintiff and others. The Plaintiff will appeal any order based upon these recommendations, and demands recusal of the magistrate.

Notice Concerning Potential Criminal Acts By This Court

The acts of this district court to date in obstructing this action evince collusion with the defendants, as was anticipated on the basis of the record of corrupt acts by prior defendants magistrate Cohen and judge Carter of this court in prior action between the parties.

The magistrate Kravchuk has without cause directly implemented the town's tactics of obstruction of justice, and has sought in collusion with the defendants to obstruct, delay, and affect commerce by extortion in the form of the "obtaining of property from another under color of official right" for benefit of defendants within the meaning of 18 USC 1951(a), and as an officer or employee of the United States has "under color or pretense of office committed acts of extortion" in violation of 18 USC 872. This also constitutes deliberate denial of the rights of the Plaintiff and others guaranteed by the Constitution of the United States as described in the complaint, in violation of the United States Civil Rights Act (42 USC §§ 1983 and 1985) and the Maine Civil Rights Act (Title 5 § 4681 et seq., a crime under Title 17 §§ 2931, 2932). These criminal acts shall be litigated with the related acts of the prior defendant officials of this court.

If the magistrate recommendation were taken, the judicial branch would be similarly implicated unless such decision were reversed upon appeal, which would certainly be taken. The judicial branch would again have deliberately violated the rights of the Plaintiff and others guaranteed by the Constitution. In applying the financial benefit of judicial economy to its own operations affecting interstate commerce, it would also commit racketeering within the meaning of 18 USC 1962. By such wrongful conversion of the property of another under color of authority as officers of the United States, it would furthermore violate 18 USC 654. All of these matters will be litigated as needed to the highest level in defense of the constitutional rights of this charity and in defense of its orphan beneficiaries, and shall be brought to the continuing attention of the Senate Committee on the Judiciary and the people of the United States.

Date: 6/23/2004

John Barth, Plaintiff, pro se
P.O. Box 88, Springvale, ME 04083

Appendix C

Appendix D: Second Magistrate Recommendation

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JOHN BARTH, Plaintiff,
v
TOWN OF SANFORD, et at., Defendants
Civil No. 04-55-P-S

RECOMMENDED DECISION ON DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT

Plaintiff, in response to my prior recommended decision, has filed an amended complaint that is confusing and sloppily drafted and does little to alleviate the problems that I tried very hard to address in my initial recommended decision. I now recommend that that court either strike large portions of this complaint or grant the motion to dismiss.

The Amended Complaint

The amended complaint is laid out in the following fashion:
(1) an unnumbered summary paragraph;
(2) a table of contents;
(3) an unnumbered introduction paragraph;
(4) a list of the parties;
(5) a jury demand;
(6) an unnumbered jurisdiction paragraph;
(7) a Count I (an equal protection claim) that makes general allegations in an unnumbered paragraph and incorporates paragraphs 3 to 7, 14, 18 to 20, 23 to 66, as well as various exhibits and a substantive memorandum of law that was previously stricken;
(8) a Count II (a due process claim and a takings claim) that also makes general allegations in an unnumbered paragraph and incorporates paragraphs 3 to 20, 23 to 66, as well as the same materials previously stricken;
(9) a "facts" section of 54 paragraphs numbered 1-3, 8, 18-71 and occupying twenty pages (the average paragraph length being just over a third of a page);

(10) an unnumbered, two and one-half page conclusion; and, finally;
(11) an unnumbered demand.

With respect to the substantive portion of the complaint, the allegations appearing in numbered paragraphs are overly long and typically relate multiple alleged facts. The paragraphs are also non-sequential; paragraphs 4- 7 and 9-17 are missing. Paragraphs 67- 71 appear to be new, but they are not incorporated into either count. Neither are paragraphs 21 and 22. The errors appear to have occurred in order to comply with a portion of my previous recommendation regarding specific passages of the original complaint that would be subject to being stricken and to avoid revising the numerous internal cross-references made throughout the original complaint.

Discussion

My assessment is that Barth has made a half-hearted effort to comply with the Court's prior order. Although 13 paragraphs have been removed, the paragraphs that remain are every bit as prolix as the paragraphs of the original complaint. In other words, the primary advice the Court offered Barth has been essentially ignored. In my prior recommendation I specifically stated, "Although I agree with Barth that the majority of his complaint recites allegations that are factual in nature, these allegations are nevertheless entirely too prolix and discursive to be viewed as falling within even the outer limits of Rule 8." (Docket No.16 at 3.) I then went on to flag specific portions of the complaint that would be subject to being stricken for other reasons. It appears that Barth removed those sections of the original complaint, but essentially ignored the admonition concerning verbosity .Indeed, a comparison of the original complaint with the amended complaint reveals that Barth has preferred to condense his line spacing, rather than his prose. For these reasons I recommend that the Court dismiss the action with prejudice in accordance with the admonition in its prior Order

Conclusion

For the reasons stated herein, I recommend that the Court dismiss the action with prejudice.

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(1) I have not taken up the Town's alternative motion to dismiss for failure to adequately allege a municipal policy, custom or usage, premised on Monell v. Department of Social Services, 436 U.S. 658 (1978). Barth has alleged various tortious acts on the part of the Town's police and fire departments, including circumstantial evidence of communication between municipal employees and private tortfeasors, which, if true, could conceivably support a finding of an unwritten policy to subject Barth to or cause Barth to be subjected to the deprivation of rights, privileges and immunities secured by the Constitution. Cf Monell, 436 U.S. at 490-91 ("Local governments, like any other § 1983 'person,' ...may be sued for constitutional deprivations visited pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decisionmaking channels."); !9., at 695 ("[W]e have no occasion to address, and do not address, what the full contours of municipal liability under § 1983 may be."). I do not offer an opinion either way, but simply caution that the question may be more difficult than the Town's cursory arguments suggest.

The history of this litigation, see Barth v. Town of Sanford, No. 01-208-P-C (D. Me. Nov. 5, 2001) (Recommended Decision) (denying class certification, dismissing claims on basis of res judicata, and descnbing prior state court action), and the difficulties that may be inherent in the substance of any actual federal claims that 8arth could conceivably now assert, make it all the more compelling that his complaint be drafted in a manner consistent with Rule 8. (See also bound exhibits filed with original complaint, specifically Ex. E- 708 & E- 7OC). The defendant is entitled to know what the operative current factual allegations are in order to properly frame a responsive pleading.

ls/Margaret J. Kravchuk U.S. Magistrate Judge
Dated: June 22, 2004

Appendix E: Plaintiff Objection to Motion to Dismiss

District Court of the United States
District of Maine
CIVIL ACTION No. CV-04-55-PS

John Barth,
Plaintiff
vs.
Town of Sanford, et al
Defendants

PLAINTIFF OBJECTION to Renewed Motion to Dismiss of Defendant Town of Sanford

The Plaintiff hereby opposes the renewed motion to dismiss or strike submitted by defendant town of Sanford. The motion presents no coherent grounds and should be denied.

This action is of profound importance in bringing to justice defendants who have systematically and cynically victimized a charity and its founder by means of crime and tort over a period of years. Further cognizance of the spurious objections and motions of the defendants would be inappropriate.

Introduction

This court ordered that the original complaint be abbreviated in accordance with the recommendations of the magistrate, with the deletion of certain material deemed immaterial or perhaps scandalous, or concerning claims prior to the corresponding statute of limitations. All of the

recommended changes were made and the Amended Complaint was timely filed. The defendant town now renews its motion with frivolous new objections and false statements, transparent and contradictory ploys which are disposed of briefly in turn herein.

Argument

The Amended Complaint uses the same paragraph numbering as the original complaint to avoid confusion and show that the recommended abbreviations were made. Despite admission of the unused paragraph numbers (p.5) the defendant falsely claims (p.2) that the abbreviations were not made, that numbers are out of sequence, and that the skipped numbers are confusing. But of course defendant is not required to answer deleted paragraphs. The objection that the Summary and Introduction are not numbered paragraphs is alike frivolous, and the claim that Counts I and II are not numbered is false.

Defendant claims falsely (p.3) that essential background fact is "superfluous historical allegations" claiming (p. 4) facts on "the development of Nasson College"and "the character and makeup of Sanford." But the college is not mentioned in the complaint except as the builder of the Springvale School campus and the beneficiary of a fund. Facts concerning Sanford appear only in the very brief section of essential background fact.

The defendant claims incorrectly (p.4) that all facts supporting claims within the statutory limitation of claims must also be within the statutory limitation, and finds few if any that are not.

The defendant claims absurdly (p.4) that offenses which in themselves are scandalous cannot be stated because the statement of the offenses is scandalous. This court did not direct the deletion of damage claims as this would violate Rule 8. The damages to the School's charitable programs

(par. 36 and p.23) are infamous acts of the defendants, but in context are plain facts.

The reference to the "sleazy and cynical demeanor" of a criminal intruder upon School premises (par. 47) is material fact to which defendant may not object.

The defendant claims disingenuously (p. 5) that it is in an "untenable position" without the exhibits and memorandum of law whose deletion it demanded and which the court directed to be submitted later per the magistrate recommendation. The exhibit numbers will not change. The defendant must answer the claims and facts of the complaint, not exhibits and arguments. The complaint properly cites the latter and of course defendant has them if curious at this stage.

The defendant claims falsely (p. 6 "tables") that the timelines of prior civil action are immaterial, although these establish the time relationship of its crime and tort with events in those actions. The defendant claims falsely (p.6) that these dates somehow reassert prior claims.

Despite the great abbreviation of the complaint the defendant amplifies (p.6) its frivolous objection to the ordinary 27 page length thereof as "voluminous source material" and "lengthy tomes" to which it fails even to allege a reference. This is absurd and contradicts its other claims.

The defendant claims (p.7) that many paragraphs contain allegations "too numerous to respond to." Rule 8(e)(2) specifically permits as many claims as the Plaintiff has, and Rules 7, 8, and 12 require the defendant to answer them. The defendant was encouraged to commit fewer crimes and torts to simplify pleadings. The complaint properly groups related facts in paragraphs.

The defendant states falsely (p.9) that certain claims involve "individuals over whom the town has no control." The impropriety and illegality of its relationship with its corporate members as principal and accessory in crime and tort is neither a defense nor a grounds for such a motion. The

Plaintiff Memorandum of Law sections *Responsibility for Crime and Tort, Perjury and Tampering, Liability of Municipality*, and *Tax Exempt Status* are included by reference in reply.

The Civil Rights Act violations are properly stated in each count to be under color of state law and pursuant to municipal policy. The defendant falsely denies this (p.9,10) despite the plain wording of the counts, and despite the definitive argument thereof in Plaintiff's Memorandum of Law, apparently the very source of defendant's citations. This objection is disingenuous at best. The Plaintiff Memorandum of Law section *Violations of Constitutional Rights and the Civil Rights Acts* is included by reference in reply.

The defendant makes the false objection (p.11) that all administrative remedies must be exhausted prior to litigation, ignoring the argument and citations in Plaintiff's Memorandum of Law. Even if this were so, Plaintiff has obviously exhausted all administrative remedies with this defendant, as shown by the very fact paragraphs which defendant demanded be deleted as immaterial. Again the deception of the court and contradiction by this defendant rise to the level of perjury. The Plaintiff Memorandum of Law sections *Violations of Constitutional Rights and the Civil Rights Acts* and *Liability of Municipality* are included by reference in reply.

The defendant states incorrectly (p.10,11) that its selective refusals to enforce law on behalf of Plaintiff and others "do not rise to constitutional violations." In fact these acts strongly support the claim of denial of equal protection of the laws, and are not stated as a separate claim. This is fully argued in Plaintiff Memorandum of Law sections *Violations of Constitutional Rights and the Civil Rights Acts* and *Liability of Municipality* which are included by reference in reply.

The court is asked to note in particular the admission by the defendant that its present and prior objections to the

number of facts and length of complaint were false and intended solely to facilitate its subsequent false claim (p.12) that the constitutional takings claim is "cursory and conclusory." This outrageous contradiction with intent to influence the course of official proceedings rises to the level of perjury and warrants sanction by this court. The facts of the present complaint fully and richly support the takings claim, as do the Plaintiff's Exhibits to be produced as needed. The arguments of the Plaintiff's Memorandum of Law section *Violations of Constitutional Rights and the Civil Rights Acts* are included herein by reference in answer.

CONCLUSION

After its pattern of aggressively dishonest conduct in all prior action, defendant has made only frivolous objections, false statements and deceptive arguments, failing to present any ground for striking of material let alone dismissal of a claim.

The defendant has made frivolous objection to the skipped numbers of paragraphs deleted by magistrate recommendation, and to the "lengthy tome" of a typical 27 page complaint. It has made the false claims that highly material fact is somehow immaterial, that the counts do not allege acts of policy under color of law as they plainly state; and that it is confused by the deletion of paragraphs in accordance with the magistrate recommendation. It has made false arguments that it must answer exhibits and arguments not yet presented rather than answering the claims and facts as required; that no fact can be outside the statutory time limitation of claims; that its crimes and torts are too numerous for response; and that its selective refusal to enforce law on behalf of Plaintiff and others does not alone violate constitutional rights. Exactly as Plaintiff predicted, this defendant has contradicted its prior false claims of excessive fact and argument, by claiming that it is confused

by the deletions, that the pared down takings claim is now "cursory and conclusory", and that exhaustion of administrative remedies is no longer shown. The ploys of this defendant are transparent, contradictory, and made with intent to deceive this court.

The defendant motion presents no coherent grounds for striking of further material let alone dismissal of a claim and should be denied.

This action is of profound importance in bringing to justice defendants who have systematically and cynically victimized a charity and its founder by means of hundreds of crimes and torts over a period of years. Further cognizance of the spurious objections and motions of the defendants would be inappropriate.

Date: June 5, 2004

John Barth, Plaintiff, pro se
P.O. Box 88, Springvale, ME 04083

Appendix F: Plaintiff Objection to First Magistrate Recommendation

District Court of the United States
District of Maine
CIVIL ACTION No. CV-04-55-PS

John Barth,
Plaintiff
vs.
Town of Sanford, et al
Defendants

PLAINTIFF OBJECTION
to Specified Portions of the Magistrate Recommendation

BACKGROUND

The defendants have engaged in a crime campaign of several years against the plaintiff and Springvale School, for their convenience in operating hobby vehicles adjacent to the school, with the intent and effect of preventing the opening of the school at its campus in Springvale, Maine. As in all prior action, to obstruct this proceeding the defendant town of Sanford has submitted a frivolous motion to dismiss based upon the absurd notion that it has now committed too many crimes to be expected to answer an adequate statement of them, already pared to minimum size.

OPPOSITION

The Plaintiff hereby objects to parts of the magistrate recommendation of 4/23/04. The specific suggestions for abbreviation are much appreciated. While the magistrate has

identified about 2 pages of material which could be manually stricken from the four copies without amendment (Table 1) and 6 pages which could be a distinct affidavit, further abbreviation would prevent the jury from understanding the crime campaign and role of the town, and would prejudice the proceedings. Table 2 lists certain incorrect statements.

Argument

The size of the Complaint depends not upon the Plaintiffs but upon the great number of torts of the defendants. The complaint is presently only 13,879 words, or 43 pages double spaced, of which 34 pages are purely factual, a very terse description of such a long series of crimes.

Reduction of Factual Material in the Complaint

The recommendation admits (p.6) that this type of action "is by no means simply stated," that the Complaint is largely factual and "not unintelligible" (p.3), and that the defendant could certainly "craft an artful responsive pleading" (p.4), but recommends abbreviation with no "specific page limit" (p.6) stating that the Complaint is "prolix and peppered with inappropriate references" (p.7). But the magistrate finds no prolix prose, and of the 8½ pages of potentially objectionable material (p.4-6), only 2 pages is not essential background fact, as shown below.

It should be clear that the defendants want this factual material deleted precisely because it is necessary to the complaint. Their claim that a mere response to the statement of their salient crimes and related fact would overburden them is a transparent and contemptible ploy. Rule 8(b) precludes unnecessary burden anyway by permitting the mere listing of facts as to which defendant is "without knowledge...sufficient to form a belief." Of course the defendant seeks to suppress or divide into miniscule

fragments the overwhelming facts, argument, and exhibits of its crime campaign, so that the events will appear unconnected or insufficient. Ordering a reduced, fragmented, or less coherent presentation of facts, argument, and exhibits would be paradoxical when the court has been presented with such a well organized and coherent set of documents, the product of months of effort which no juror can be expected to perform, let alone all jurors in a consistent manner. The Memorandum of Law and the Exhibits are essential to provide the jury with a coherent legal reference and a coherent reference to the exhibits. They are also necessary to establish sufficiency of complaint by showing that the plaintiff is entitled to relief as required by F.R.Civ.P. rule 8(a)(2).

Plaintiff welcomes the magistrate's suggestions concerning abbreviation and shares the wish that all parties could be spared a painful first reading of so much fact. Certainly a complaint which describes a lengthy crime campaign against a charity would be more pleasant to read if shorter, no matter how short it is. Plaintiff also feels *after* reading a long complaint that it may be summarized, but such a summary cannot serve to present the facts to a jury so that it may form its own opinion. This complaint can be abbreviated by 2 pages as indicated in Table 1, and 6 more pages could be a separate affidavit, but like a textbook, law book or telephone directory, more drastic abbreviation would prevent others from getting the same information.

In simple cases the notice-pleading concept is sufficient because there is not much fact other than a few exhibits, depositions, and some testimony, and little presentation is needed to connect so few facts; but this is not so in cases of civil rights violated by a lengthy crime campaign. The facts in this case are far too numerous to recount verbally again and again in court, and far too numerous for the jury to remember and organize and connect without a full account in the Complaint. It is here that the jury must look for a coherent statement of the facts underlying the

claims. It is an unreasonable burden of the jury to recall, and of the plaintiff to call out and recall for the jury, such a great number of facts, and such lengthy verbal presentations would be tiresome and ineffective, even if plaintiff had opportunities to make them, which he would not.

Moreover, notice-type complaints have been found insufficient to "adequately state the factual basis of the claims" of civil rights complaints involving a long series of offenses by a group or municipality, which in sum violate civil rights but when viewed individually indicate only distinct violations. Such minimal civil rights complaints have been dismissed as mere allegations, failing to meet the Rule 8(a)(2) requirement of showing that the plaintiff is entitled to relief.

Specific Abbreviations Suggested

The main abbreviation suggested (p.4) is a very short summary of paragraphs 3 to 19 (complaint pp.10 to 15) which are background facts on prior torts of defendants against plaintiff, and the nuisance issue. The jury will need these facts to understand the motives and roles of the town and its agents. This could be a distinct affidavit, but is more coherent within the complaint.

Fact concerning torts prior to the corresponding statute of limitations (Complaint pp. 10,11) could be deleted if these torts were the basis of distinct claims. But here these facts are necessary to establish the complicity and role of defendants in civil rights violations, sufficiency of complaint, and the necessity of relocation of the School.

Fact concerning the continuing nuisance tort (Complaint pp.12 to 15) describe some of the violations of constitutional rights counted in this complaint, because every instance of continuing tort is a new cause of action. The continuing nuisance tort also independently establishes both the complicity and the role of the defendant town as principal and accessory in the crime and other tort. Moreover, the

continuing nuisance tort is contributory to the necessity of relocation of Springvale School, and separately and independently requires the relief demanded. The quantitative studies of the nuisance itself thoroughly discredit prior false claims of the town.

Actual deletion of factual background destroys the context and thereby the credibility of such complaints by creating the false impression that the series of crimes began with no apparent cause in a normal community, and prevents the jury seeing the motive and complicity of the town. Persons who read the Complaint as it is can see how the situation arose, can see the motives of the town and its tortfeasors, and can see by the preponderance of the evidence that the defendants are guilty. Without the context of the nuisance problem the jury cannot see the motives and connections with the crimes. Without the description of the criminal element of the town and the maneuvers of the town officials they can only compare the situation to what seems more likely in their own more civilized communities. In short, without this contextual material a jury cannot understand the facts as well. It should be presented in some form, ideally within the complaint.

Apart from these six pages of important background fact the recommendation (p.5,6) finds 2½ pages of matter deemed immaterial, misplaced argument, or scandalous. Most of this (Table 1) could be manually stricken with little harm. The short table of Prior Related Action (p.5, 1/4 pp.) is needed because some factual material there is incorporated by reference; and the two short lists of facts, exhibits and argument supporting each count (p.6,7, ¼ pp.) are required under Rule 8(a)(2) to show explicitly that plaintiff is entitled to relief for each claim. These lists index the facts to the counts and abbreviate the "incorporated hereunder" wording typical of counts in simpler complaints. The last two sentences of paragraph 15 (p.15, 5½ lines) arguing that plaintiffs did not "come to the nuisance" could now be in the

Memorandum of Law but do not warrant separate treatment there. Part of the second last sentence of paragraph 64 (p.36, "and do not constitute probable cause") could be taken as fact or argument but is so brief as not to warrant separate treatment in the Memorandum. The first sentence of paragraph 2 (p.9, 3 lines) accurately characterizes a certain segment of the population and officials of the town of Sanford, solely in terms of socioeconomic factors and relevant attitudes and behaviors, for the necessary purpose of advising jurors that many such people exist within the town. It contains no epithet nor material derogatory of any individual, protected class, or of the entire town. The second last sentence of paragraph 36 (p.23, 1½ lines) quantifying collateral injury to the School's beneficiary orphans describes a scandalous crime but is readily substantiated fact which enables the jury to understand the crimes and the character of these defendants.

Incorrect Contention of Prolix or Discursive Prose

The recommendation states that the length of complaint may be due in part to factual material being "too prolix and discursive" but finds no instance of this. The plaintiff also wishes this were so but in fact has pared every sentence down to a terse minimum in dozens of revisions. The large number of facts in such a case does not argue that any statement is "prolix," and the fact that the crime campaign is a long story does not make its concise telling excessively discursive. The wish that the necessary fact could be more concise does not accord with the facts.

Absence of Rules Limiting the Length of Original Pleadings

There is no F.R.Civ.P. rule limiting the length of original pleadings because some cases simply involve far

more fact than others, however concisely stated. The rules require only that each averment be concise (Rule 8(e)(1)) and that a pleading containing a claim also contains a short and plain statement of the claim, usually presented as a count (Rule 8(a)(2)). This complaint fully meets these Rules. It is even smaller than the F.R.App.P. Rule 32(a)(7)(B)(i) limit of 14,000 words for principal briefs, which are ordinarily shorter than original pleadings.

Amendment of Minutiae in a Case of Massive Wrongs is Unwarranted

Who can read these facts and view the photographs of these massive crimes against a charity for desperate orphans, crimes committed purely for the convenience and entertainment of hoodlums, and quibble about the degree of relevance of a few pages of facts? Why waste the time of the court weighing minor inconveniences in a balance against such heinous crimes? Who can threaten to deny process altogether against this crime campaign exceeding all other crime in Sanford during those several years, crime which has much of the annual human cost overseas as the combined crime and accident rate of the state of Maine, on the ground that a first reading of the facts takes somewhat longer than one might prefer? It is unwarranted to entertain any but the most grave objections to such a complaint, whereas the defendant motion posits only the most frivolous, contemptible, and simply false objections.

Table 1 Statements in the Complaint which may be Stricken Manually without Harm

1. The Table of Authorities (p.4, 1 pp.) is immaterial; the full table is in the Memorandum of Law.
2. The Table of Facts Admitted by Defendant in Prior Action (p.8, ½ pp.) may be submitted later.

3. The last sentence of paragraph 67 (p.38, 3 lines) as to dismissed defendant is now immaterial.

Table 2 Incorrect Statements in the Recommendation

Page	Statement
1	"Barth recounts roughly a decade of…efforts to develop a parcel of property…" There are very few references in the Complaint to the renovation work at Springvale School, no more than necessary to understand the crime facts and compensation issues.
2	Implication that complaint is not double-spaced or in a 12-point font, which in fact it is.
2	(footnote) "has not named either of the [police or fire] departments or their personnel…" This case is against the town of Sanford which is responsible by *respondeat superior* for the acts of its departments and employees. Departments are not necessary defendants.
3	"All of the other criticisms raised by the town are substantiated by…the complaint." The magistrate found no truly "superfluous allegation", "inappropriate social commentary", "irrelevant references", "derogatory comments" nor "baseless fantasies."
6	"there is no cause to submit a memorandum of law at the pleading stage…" This was done to provide a single coherent legal reference and to sweep away the usual false claims of lawyers against competent pro se litigants. It is required by Rule 8(a)(2) in this complex case to show that the plaintiffs are entitled to relief. It saves the court time.
6	"a…folio of..exhibits is inappropriate unless…the basis of [the] cause of action." The exhibits are a basis of the cause of action, must be submitted sooner or later, and are a coherent presentation which sweeps away the usual claims of these devious

defendants.In a complex case dozens of documents are needed, not merely an attached contract. The Exhibits in such a case are part of the Rule 8(a)(2) showing of sufficiency of complaint.

CONCLUSION

The purpose of the defendant town in making a motion to strike much of the complaint is of course to damage an overwhelmingly strong case by suppressing or fragmenting the presentation of fact, argument, and exhibits so that its crime campaign would falsely appear to be disconnected incidents, preventing the jury from understanding the crime campaign and the role of the town as principal and accessory, and allowing question of the sufficiency of the complaint. The ploy is transparent and cannot be entertained in good faith..

While all might wish that this painful case could be stated even more briefly, the magistrate finds no truly prolix, discursive, or scandalous matter. The recommendation does identify about 2 pages of material which could be manually stricken from the four copies without amendment, and 6 pages of background fact which could be a separate affidavit, but are more coherent within the complaint. No further abbreviation is possible without severely prejudicing the proceedings. Amendment of the such a grave complaint on the basis of defendant's frivolous objections to inconvenience is unwarranted. Manual striking of the statements in Table 1 should be enough.

Date: 4/27/2004

John Barth, Plaintiff, pro se
P.O. Box 88, Springvale, ME 04083

Appendix G: First Magistrate Recommendation

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE
Civil No. 04-55-P-S

JOHN BARTH,
Plaintiff,
v.
TOWN OF SANFORD, et at.,
Defendants

RECOMMENDED DECISION ON DEFENDANTS' MOTION TO DISMISS OR STRIKE PLAINTIFF'S COMPLAINT

Pro se plaintiff, John Barth, has filed a complaint against, among others,(1) the Town of Sanford, Daniel Casey and John Doe. In his 43-page complaint, Barth recounts roughly a decade of events surrounding his efforts to develop a parcel of property located in Sanford for use as a college preparatory institution. The gist of Barth's complaint is that the Town of Sanford, certain municipal officers and some of its private residents engaged in a prolonged civil conspiracy to deprive him of constitutional rights, to damage or destroy real and personal property owned by him and to frustrate or prevent his efforts to make constructive use of his property(2). Among the claims expressly identified in his complaint are federal and state civil rights claims for deprivation of his constitutional rights to receive due process and equal

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(1) In addition to naming the Town of Sanford as a defendant, Barth lists the Town's "Inhabitants" as defendants. Barth also named Judge Carter and Magistrate Judge Cohen as defendants, but he has since voluntarily dismissed his

claims against them to avoid having his case transferred to New Hampshire. (Docket No.6.)

(2) Barth's complaint suggests that title to some of the subject property may actually be held by a corporation of which he is an owner and/or officer. Barth's complaint also suggests that other parties may seek to join in this proceeding at a later date. Barth should be on notice that corporations may not appear in court unrepresented by counsel. In re Victor Publishers. Inc., 545 F.2d 285,286 (Ist Cir. 1967) ("Although an individual has a statutory right to represent himself in federal court even if he is not a lawyer, a corporation may be represented only by licensed counsel.") (citation omitted).

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protection under the law and to be free from unreasonable searches and seizures of his person. (Docket No.1 at 5,6- 7.) In addition, Barth alleges an unlawful taking of his property for public use without just compensation.(3)(Id.) The law of nuisance serves as a general backdrop against which Barth draws his other claims, although Barth indicates in both his complaint and in his response to the pending motion that he is not pursuing a nuisance cause of action, having already done so, unsuccessfully, in prior litigation. (Docket No. 1 at 5; Docket No.8 at 3.) For remedies, Barth requests both injunctive relief and money damages "sufficient for relocation of the School. ..to equivalent educational facilities to be purchased or constructed and ready within two to three years." (Complaint at 43.) In support of his complaint, Barth submitted a 62-page memorandum of law and over 70 exhibits.

The Town has moved for an order dismissing or striking the complaint and requiring Barth to submit the kind of notice-pleading complaint that a lawyer might draft, albeit in no more than a 20-page, double-spaced document drawn in a 12-point font. (Docket No.7 at 7.) I recommend that the Court grant the motion, though not in every detail. I also offer various recommendations to Barth concerning the ways in which he might amend his complaint.

Discussion

Pursuant to Rule 8(a)(2) the Federal Rules of Civil Procedure, a pleading "shall contain," among other things, "a short and plain statement of the claim showing that the pleader is entitled to relief." Pursuant to Rule 41(b). "a defendant may move for dismissal of an action" under circumstances where a plaintiff has failed to comply with the rules. Precedent in this Circuit makes it clear that Rules 8 and 41 give the Court the discretion, in appropriate

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(3) Many of the allegations concern activity on the part of the municipal police department and officers employed there. Other allegations relate to conduct on the part of the municipal fire department and its employees. (See, e.g., Docket No. 1, 37-46,62-64,68.) Barth has not named either the departments or any of their personnel as defendants, although he makes reference in his allegations to at least one police officer by name.

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circumstances, to dismiss a complaint for failure to comply with the "short and plain statement" condition. See, e.g., Kuehl v. FDIC, 8 F.3d 905,908 (lst Cir. 1993) (describing as "very severe," but nevertheless affirming district court's dismissal of action where district court gave plaintiff an opportunity to amend and offered recommendations on how to amend). As an alternative to dismissal, the Court also has considerable discretion under Rule 12(f) to strike from any pleading any "redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(!); Alvarado-Morales v. Digital Equipment Corp., 843 F.2d 613,618 (lst Cir. 1988). The Town argues that Barth's complaint should be dismissed or stricken because it would impose an undue burden on the Town to answer the complaint in its current form. In particular, the Town complains of "superfluous historical allegations," inappropriate "social commentary" concerning the population of the Town, "'evidential references' to various irrelevant matters," "baseless fantasies," scandalous and derogatory comments, and inappropriate legal argument, including criticism of prior orders and opinions in both related and unrelated litigation. (Docket No.7 at 2-6.) In response,

Barth characterizes his complaint as primarily relating factual information in a concise and organized fashion. (Docket No.8 at 2.) Although I agree with Barth that the majority of his complaint recites allegations that are factual in nature, these allegations are nevertheless entirely too prolix and discursive to be viewed as falling within even the outer limits of Rule 8. Moreover, prolixity is not the only problem. All of the other criticisms raised by the Town are substantiatiated by different portions of the complaint. Under these circumstances, the appropriate course of action is to order Barth to amend his complaint by abbreviating his factual allegations and deleting several offensive remarks found therein. Outright dismissal of the complaint is not called for at this juncture because dismissal is a sanction "generally reserved for a pleading that is 'so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised.'", Black v. UnumProvident Corn., 245 F. Supp. 2d 194,197 (D. Me. 2003) (quoting Simmons v. Abruzzo, 49 F.3d 83,86 (2d Cir. 1995)). **To be fair, Barth's complaint is not unintelligible. Nor is it so confused, ambiguous and vague that the defendants could not possibly craft an artful, responsive pleading.** However, it is sufficiently prolix to require amendment. In my view, Barth's complaint primarily suffers from his apparent failure to appreciate the utility of the notice-pleading rule and the fact that a pleading is not a motion. Rule 8's short and concise condition exists, largely, for Barth's benefit. Under the Rule, Barth is free to provide the defendants with allegations sufficient only to "give the defendant fair notice of what the plaintiffs claim is and the grounds upon which it rests." Conley v. Gibson. 355 U.S. 41,47 (1957). See also Swierkiewicz v. Sorema N.A., 534 U.S. 506,512 (2002). Thus, for example, rather than submitting seven pages of background allegations (Docket No. 1, par. 3-19), all of which precede the beginning of what Barth would characterize as a more than coincidental

synchronicity between certain municipal actions and certain tortious private acts directed at him or his property (first suggested at Docket No.1, par. 20), followed by a failure of the municipal police to respond (first suggested at Docket No. 1, par. 25), Barth could reasonably have made general allegations simply indicating (1) that the Town's alleged adversity toward him began in 1995 and (2) that between 1995 and 1996 the Town allegedlv manifested a degree of animosity toward him when it rezoned the school property, and advanced the interest of certain recreational motor vehicle owners that were allegedly illegal or at least per se nuisance activities that made the operation of an academic institution untenable.(4) Many other areas of the complaint could benefit from similar abbreviation. Barth might also choose to delete

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(4)These allegations appear to be material to Barth's equal protection claim.

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portions of his complaint in light of the fact that there is a statute of limitation regarding these causes of action and in light of the fact that the prior litigation will almost certainly have preclusive effect as to much of his claim. Another suggestion is that Barth not belabor his discussion of the many characteristics of the alleged ATV and snowmobile nuisance, including his efforts to collect empirical data of the same, because he says he is not asserting a nuisance cause of action in this lawsuit. Finally, I conclude that the following portions of the complaint should be omitted from any forthcoming revision because they would be appropriately subject a further motion to strike:

1. The Table of Authorities on page 4, which is entirely superfluous to the presentation of Barth's cause;
2. The catalogue of "prior related action" on page 5, including the superfluous characterizations of prior court decisions;
3. The references to Barth's exhibits and memorandum of law ("argument") found the bottom of pages 6 and 7, which the defendants cannot reasonably be expect to respond to at this juncture;
4. Table 1, which the defendants cannot reasonably be expected to respond to at this juncture;
5. The first sentence of paragraph number 2 on page 9, which constitutes "scandalous matter";

6. The entirety of paragraph number 15 on page 15, which constitutes inappropriate argument;
7. The allegation on page 23 that the Town has ruined the childhoods of some 1700 orphans or otherwise subjected them to squalor and abuse, which constitutes "scandalous matter" and concerns, in any event, hypothetical individuals who are not party to this litigation;
8. The last two sentences of paragraph 64 on page 36, which constitutes inappropriate argument; and
9. The last two sentences of paragraph 67 on page 38, which constitutes "scandalous matter" and concern, in any event, individuals unrelated to this litigation.

In addition to these problems with the complaint, Barth should understand that there is no cause for him to submit a memorandum of law at the pleading stage of this litigation. Moreover, submitting a bound folio of documents and other exhibits is inappropriate unless the documents somehow form the basis of his cause of action. For example, a plaintiff might well attach a contract to a complaint that alleges breach of contract. In the context of Barth's civil rights claims, it is not apparent that an of the documents he has submitted form the basis for any of his claims.Even if the docments tend to support Barth's claims, now is not the time to prove his claims; mere allegations will suffice.

I make no recommendation of a specific page limitation, but Barth should apprehend thathis complaint is significantly over-long in its current form. Although in need of significant abbreviation, the type of action Barth is attempting to pursue is by no means simply stated, even by seasoned counsel. I also consider the Town's request that Barth be ordered to submit a double-spaced pleading to be inappropriate, particularly in light of the fact that Barth's complaint is already double-spaced. Neither the Federal Rules nor the Local Rules prescribe double-spaced formatting for pleadings and this Court's docket certainly contains many single-spaced complaints drafted by attomeys

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(5) Barth would be well advised, however, to acquaint himself with Local Rule 7(e) regarding the form and length of any memoranda filed in this court.

In sum, I do not recommend that the Town's motion be granted simply because the complaint exceeds some arbitrary

page number or is inappropriately formatted. I recommend that the Town's motion be granted because the complaint is so prolix and peppered with inappropriate references that the Town ought not be put to the burden of answering. Presumably, after further reflection and research, Barth will be able to set forth the facts that support the various elements of his causes of action without arguing the merits, revisiting every aspect of his ten-year conflict with the Town and people of Sanford, expounding upon irrelevant matters, or attempting to subject anyone to ridicule.

Conclusion

For the reasons stated herein, I RECOMMEND that the Court GRANT defendant's motion, STRIKE the complaint and ORDER Barth to file, within 20 days, an amended complaint that corrects the problems identified herein, barring which the Court should dismiss Barth's suit with prejudice.

[NOTICE]

April 22, 2004

/s/ Margaret J. Kravchuk U.S. Magistrate Judge

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(6)The instant motion does not raise the question of whether Earth's core allegations are sufficient to state a claim for which relief can be granted and I have not considered that question in forming my recommendation.

Appendix H: Text of 28 U.S.C. § 2072

28 U.S.C. § 2072

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

[continuation omitted]

Appendix I: Text of 42 USC §1983

Civil Rights Act 42 USC § 1983:

" § 1983. Civil Action for deprivation of rights
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." R.S. § 1979